

## **RESOLUTION NO. 001**

**A RESOLUTION OF HEARING OFFICER THOMAS W. ALLEN, DESIGNATED BY THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH TO CONDUCT HEARINGS PURSUANT TO CHAPTER 20.91A OF THE NEWPORT BEACH MUNICIPAL CODE, APPROVING USE PERMIT NO. 2008-032 FOR A RESIDENTIAL CARE FACILITY LOCATED AT 1132 WEST BALBOA BOULEVARD (PA2008-103)**

**WHEREAS**, an application was filed by M. William Hanck with respect to property located at 1132 West Balboa Boulevard, and legally described as Lot 9 in Block 111 of Tract No. 234 in the City of Newport Beach, County of Orange, State of California (APN 047-263-20), as per map recorded in Book 13, Page(s) 36 and 37 of Miscellaneous Map, in the Office of the County Recorder of Orange County, requesting approval of Use Permit No. 2008-032 to allow a residential care facility to operate an adult alcohol and/or drug abuse recovery treatment facility for females only; and

**WHEREAS**, on December 4, 2008, December 10, 2008, and December 17, 2008, the Hearing Officer held a noticed hearing in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California at which time the project application was considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to, and considered by, the Hearing Officer at the hearing; and

**WHEREAS**, a use permit for the proposed residential care facility has been prepared in accordance with the provisions of Chapter 20.91A of the Municipal Code, which states that in addition to the required findings in Section 20.91.035, the findings required for a use permit in Section 20.91A.060 must also be made; and

**WHEREAS**, the required findings of Section 20.91.035 and facts in support of such findings are as follows:

1. Finding: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.

Facts in Support of Finding: The subject property is located in the R-2 District, and the proposed use as a residential care facility is a nonconforming use in a residential district. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. Pursuant to this chapter, any property in a residential district which became nonconforming as a result the passage of Ordinance 2008-05 may seek the issuance of a conditional use permit to continue the use so long as the application for that permit was filed within the time limits required by Chapter 20.91A. The use of the property as a residential care facility may continue only with the granting of approval of this use permit. This application has been filed in accordance with Ordinance 2008-05.

Balboa Horizons is the only Group Residential Use within the block surrounded by West Balboa Boulevard, 11<sup>th</sup> Street, 12<sup>th</sup> Street, and West Bay Avenue, which



is consistent with the American Planning Association's standard for permitting one or two such uses per block.

2. Finding: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

Facts in Support of Finding: General Plan Policy LU 6.2.7 directs that the City regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. A use permit to regulate the use and operational characteristics of this facility is consistent with this policy. The operations of the facility will be subject to conditions of approval enacted to ensure that the facility will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

The subject property is located in the R-2 District, which allows for single-family and two-family residential uses. The existing structure is a three-unit apartment complex that was constructed in 1958 when the property was zoned R-3, which allowed for multi-unit residential uses. The existing nonconforming structure may be continued, subject to the provisions of Chapter 20.62 of the Zoning Code. The intensity of the use (11 residents in 5 bedrooms, within two units) is consistent with typical residential development intensity in the R-2 Zoning District.

3. Finding: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

Facts in Support of Finding: The proposed use is classified as "Residential Care Facilities, General," and provides housing for 11 individuals with a disability who are not living together as a single housekeeping unit as that term is defined in Section 20.03.030 of the Municipal Code. The facility, as conditioned, will comply with the operational standards outlined below in Finding No. 5.

4. Finding: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

Facts in Support of Finding: The proposed use will be consistent with the purpose of Chapter 20.91A, which is to promote the public health, safety and

welfare, and to implement the goals of the General Plan to ensure that the use does not change the character of the neighborhood in which the use is located, by imposing specific operational conditions. The residential care facility is located within a block in which no other residential care facilities are located, and the proposed use will protect and implement the recovery and residential integration of the disabled within the residential district in which the use is located.

**WHEREAS**, the required findings of Section 20.91A.060 and facts in support of such findings are as follows:

5. Finding: The use conforms to all applicable provisions of Section 20.91A.050 (Development and Operational Standards). These development and operational standards are summarized as follows:

- a. No secondhand smoke can be detectable outside the property.
- b. Operations must comply with state and local law, the submitted management plan, including any modifications required by this Use Permit.
- c. A contact name and number be provided.
- d. No services requiring a license can be provided if the facility does not have a license for those services.
- e. There shall be no more than 2 persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.
- f. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.
- g. All individuals and entities involved in the facility's operation and ownership must be disclosed.
- h. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.

Facts in Support of Findings (Items a through h, above): The use conforms to the standards set forth in Section 20.91A.050, as follows.

- a. The applicant has agreed to control second smoke on the property so that it will not be detectable outside of the property.



- b. The operations of this facility are in compliance with the State ADP license, and as conditioned, the facility will comply with the Operations and Management Plan, as shown in Exhibit "B."
  - c. Appropriate contact names and numbers are provided within the application documentation.
  - d. The operation plan for the facility provides only for those services that are allowed by the facility's ADP license.
  - e. The property is restricted by the ADP license to the use of 5 bedrooms for residents, with 4 bedrooms having 2 persons per room and 1 bedroom having 3 persons. The total capacity per the ADP license is 11 persons in 5 bedrooms. This occupancy is consistent with the original residential occupancy design of the building.
  - f. As part of the application, the applicant states that the facility has applied for Orange County Adult Alcohol and Drug Sober Living certification.
  - g. All employees and management personnel have been disclosed in the application documentation.
  - h. M. William Hanck, David Longridge, and Paul Moen own the property, and Mr. Hanck manages the facility. The owners do not own or operate any other similar facility in the City of Newport Beach or in the State of California, and there is no known record of code violations for this facility. The State of California ADP license is in good standing, and is valid until May 31, 2009.
6. Finding: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.

Facts in Support of Finding: The NBMC states that the required number of off-street parking and loading spaces for a residential care facility is one space per three beds. While the project site provides a total of three parking spaces, which is less than the four spaces required by the Code, the three parking spaces provided on-site appear to be sufficient to serve the parking needs of the facility. This is based on the operational staffing plan of not more than three staff at the facility at any one time, and the fact that most client residents are not allowed to have personal vehicles during the duration of their stay at the facility. A condition of approval has been included that prohibits clients and staff from parking on public streets in the City, except for two on-street spaces to be utilized following notification to the City and following the purchase of two master parking permits from the City for such parking. Visitors may park on the West Balboa Boulevard frontage that has parking along both the sidewalk and the center median. A facility van provides transportation for the residents on a weekly schedule

dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times.

7. Finding: The property and existing structures are physically suited to accommodate the use.

Facts in Support of Finding: The use of the existing structure as a residential care facility is physically suited to accommodate 11 resident clients. Previously used as residential rental units, the existing structure consists of two 2-bedroom units and one 1-bedroom unit. The building is similar to many other residential structures along West Balboa Boulevard built on a lot that measure approximately 30 feet by 100. The structure complies with the required 3-foot side yard setbacks, and 5-foot front yard setback (there is no setback requirement at the rear of the lot, which abuts a public alley). Balboa Horizons substantially renovated the property when it took ownership and operates the treatment facility within the original residential design capacity. The building facility is currently in excellent physical condition.

8. Finding: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer and/or City Council shall consider, as appropriate, the following factors:

- a. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;
- b. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007, and on file with the Director of Planning; and
- c. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block



length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.

Facts in Support of Finding (Items a through c, above): Balboa Horizons is the only residential care facility use within the block bound by West Balboa Boulevard, 11<sup>th</sup> Street, 12<sup>th</sup> Street and West Bay Avenue, which measures approximately 400 feet in length. In addition to the Balboa Horizons facility, there are three other residential care facility uses located within a three-block radius of the subject property. Two Group Residential use permit applications are currently under review for the properties located at 1216 West Balboa Boulevard and 1115 West Balboa Boulevard. There is also a 6-bed facility located at 1217 West Bay Avenue, pending ADP licensing, which is located between 12<sup>th</sup> Street and 13<sup>th</sup> Street. This facility is exempt from City regulation per the State's requirement that ADP-licensed facilities housing six or fewer clients are exempt from local regulations that are not placed on every residence in the City.

The facility has operated in this location since 2004, and the continued maintenance of the use of the subject property as a residential care facility will not contribute to changing the residential character of the neighborhood. The excellent physical condition of the subject property and its current operational characteristics and standards appear to make it compatible with the surrounding neighborhood.

9. Finding: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.

Facts in Support of Finding: A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading is at the West Balboa Boulevard frontage that is less congested than the narrower alley access at the rear of the building. A condition of approval is included requiring the loading and unloading of the transportation van passengers to occur only in open parking spaces on West Balboa Boulevard, and prohibiting the van drivers from stopping or double-parking in a traffic lane.

10. Finding: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Facts in Support of Finding: No regular deliveries are scheduled for the facility.

11. Finding: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Facts in Support of Finding: No commercial trash collection is scheduled for the facility. Standard trash pick-up is the regularly scheduled City of Newport Beach service one day per week.

**WHEREAS**, the project qualifies for a Categorical Exemption pursuant to Section 15301 of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

**NOW, THEREFORE, BE IT RESOLVED:**

**Section 1.** The Hearing Officer on behalf of the City of Newport Beach hereby approves Use Permit No. 2008-032, subject to Conditions of Approvals in Exhibit "A," and the Operations and Management Plan in Exhibit "B," attached hereto and made part hereof.

**Section 2.** This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 17TH DAY OF DECEMBER 2008.**

BY:   
Thomas W. Allen, Hearing Officer



**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

**USE PERMIT NO. 2008-032**

**BALBOA HORIZONS RECOVERY SERVICES, LP**

1. **Governmental Referrals.** The operator of Balboa Horizons Recovery Services, LP, hereinafter referred to as "Operator," shall not provide any services to any client or house any client who has been referred or caused to be referred to Balboa Horizons' facility by any governmental agency, including but not limited to probationers or parolees, due to the limitations that Section 509.9 of the California Building Code places on Group I and R occupancies.
2. **Medical Waste.** Any and all medical waste generated through the operation of the facility shall be disposed of in accordance with the City of Newport Beach's Municipal Code, all other laws and best industry standards and practices.
3. **Trash & Trash Enclosures.** Operator shall comply with City code provisions pertaining to trash enclosures, and if directed by the Planning Director, shall secure and maintain commercial bin service at the subject property.
4. **Smoking and Tobacco Products.** Operator shall use best efforts to contain secondhand smoke generated by patients, clients, customers and staff within the lot line of the subject property. These "best efforts" include, but are not limited to:
  - The designation of a smoking area, preferably indoors, with a smoke containment device or structure.
  - Avoidance of smoking at the facility which cause unreasonable annoyance to adjacent residences.
  - Rapidly addressing neighbor complaints of secondhand smoke, when it can be reasonably determined that the smoke comes from the facility.

In addition, Operator will not allow clients, staff, or residents to litter cigarette butts on the ground, floor, deck, sidewalk, gutter, boardwalk or street. Operator's administrators and managers shall actively enforce, on the City's behalf, the City's prohibition on clients' tobacco use on beaches, boardwalks, and piers (NBMC §11.08.080), including when Operator's clients are at "AA" meetings.

5. **Off-Street Parking, and Loading and Unloading.** Operator shall provide three (3) off-street parking spaces for the use of the facility's staff and up to one client at all times. Operator shall ensure that the parking spaces shall remain open and clear of any and all obstructions at all times, and used for parking or deliveries.



Loading and unloading of passengers of the facility's transportation van shall occur only in open parking spaces on West Balboa Boulevard. The van driver is strictly prohibited from stopping or double-parking in a traffic lane to load and unload passengers. In addition:

- Client drivers shall respect all City rules regarding parking and/or stopping and waiting to load residents. Client transport vehicles shall not block adjacent alleys or street ends.
  - Client drivers shall not leave vehicles in reverse gear if reverse has an audible back-up warning sound.
  - Client drivers shall speak to residents at a level protective of neighborhood peace, cognizant of the hour, to avoid waking neighbors.
6. **Hotline.** Operator shall establish, provide public notice of and operate a hotline for receiving inquiries and/or complaints in reference to its operation of its facility. The phone number need not be staffed 24 hours a day seven days a week, but callers should be responded to within the next 24-hour period.
  7. **Quiet Hours.** Operator shall apply the Quiet Hours of 10:00 p.m. to 8:00 a.m. daily to its patients, clients and customers occupying beds in its facility. During these Quiet Hours, all residents will be inside except during emergencies. Quiet means no sound is audible beyond the perimeter of the facility except in a demonstrable emergency.
  8. **Route Plans.** Operator shall adhere to the Route Plans for transport of its staff, residents, clients, and customers. The Route Plans are included in the Operations and Management Plan attached as Exhibit "B." Short-term interruptions, such as medical emergencies or street maintenance which are beyond Operator's control, are allowable modifications to the Route Plans.
  9. **Deliveries.** Any deliveries to the facility shall only be made between 8:00 a.m. and 5:00 p.m. on weekdays and not at all on Saturdays or Sundays, unless urgently necessary. In addition, delivery vehicles may not block the alley.
  10. **Stakeholder Group.** Upon invitation by the City, Operator shall participate in the activities of any stakeholder committee or group established by the City to address complaints and concerns of residents of the City regarding the operation of Residential Care Facilities in the City.
  11. **Persons per Bedroom.** In Unit A, Operator shall not allow more than two (2) clients in one bedroom and three (3) clients in the other bedroom. In Unit C, no more than two (2) clients shall be allowed in each of the three bedrooms. This is consistent with the provisions of the ADP license.

12. **State Licensing, Treatment, and Occupancy (if licensed).** All occupancies at the subject property shall comply with the State ADP License Number 300165AP, which expires on May 31, 2009, and any successor license offering the same treatment services. Operator shall maintain ADP licensing throughout the duration of this use permit.
13. **Building and Zoning.** Operator recognizes that subject property has specific setbacks from the side yards, front yard, and/or back yard per the City's Building and Zoning Codes. Operator will keep these setbacks clear of obstruction, including building obstruction. The orderly storage of trash cans is acceptable in setbacks.
14. **Staffing.** Operator will have enough staff to appropriately and responsibly manage the facility; and shall limit the staff to no more than three staff members on-site at any one time, so as to avoid overwhelming the facility's neighborhood with cars, shuttles, trash cans, or other aspects of a high-staff commercial use in a residential neighborhood.
15. **Nuisances.** The subject property shall not be unsafe, unsightly or poorly maintained. If Operator receives a nuisance violation from the City in regards to any of these issues, Operator shall correct the violation within seven (7) days or contact the City directly to negotiate a mutually-agreeable timeline.
16. **Profanity and Lewd Behavior.** Operator shall not tolerate lewd behavior, lewd speech, or profanity at the subject property. Profanity spoken or yelled at a level heard by neighboring residents may result in an administrative citation issued by the City upon the property owner and operator.
17. **Noise.** Operator shall strictly adhere to the City's noise standards (NBMC §10.26.025; 10.26.030). Operator shall be responsible for minimizing clapping, stomping, or other noises at meetings or gatherings at the subject property, consistent with NBMC §10.26.030.
18. **Beaches and Other Common Gathering Areas.** Operator's use of the beaches for meetings, prayer, conversation, or other gatherings shall show due respect to non-resident visitors, residents, and other beachgoers, thus allowing them to take full enjoyment of the beach. Operator shall not conduct business on the beach (per NBMC §10.08.030).
19. **Services to Facility's Clients or Residents.** Operator will use industry's best practices to ensure that the facility's clients or residents stay in recovery (including scheduled substance testing, random substance testing, and required counseling). Operator shall ensure that any client or resident removed from Operator's program or facility has the resources necessary to return home.



20. **Federal, State and Local Laws.** Operator shall comply with all federal, state, and local laws. The issuance of this use permit shall not constitute a waiver of the requirements of any federal, state or local law, including the requirements of the California Building Code.
21. **On-Street Parking.** (a) Clients and staff of the Balboa Horizons facility are prohibited from parking on public streets in Newport Beach, except for two (2) on-street spaces, utilized following notification to the City from Balboa Horizons Recovery Services and following the purchase of two master parking permits by the Operator from the City for such parking; (b) in the event that the City issues a Use Permit to a similarly-situated recovery home operator that includes an On-Street Parking condition to a similarly-situated recovery home operator that is materially more favorable than this Condition, the Planning Director may authorize the same condition to Balboa Horizons Recovery Services.
22. **Grant of Use Permit.** Use Permit No. 2008-032 is granted to Balboa Horizons Recovery Services, LP to operate an adult alcohol and/or drug abuse recovery treatment facility for females only, and all clients of the facility shall be classified as disabled, as that term is defined by Federal and State fair housing laws. The Operator shall execute an affidavit declaring that all clients receiving services from this Facility are disabled persons.
23. **Compliance with Conditions of Approval.** Any changes in operational characteristics, including but not limited to the following, shall require an amendment to this use permit or issuance of a new use permit:
  - a. Modification, expiration without renewal, or loss of ADP license.
  - b. Increase in number of resident clients.
  - c. Increase in on-site staffing.
  - d. Increase in physical capacity of facility including number of beds, number of bedrooms, floor area of facility, etc.
  - e. Change in the Operations and Management Plan (Exhibit B).
  - f. Request for amendment to any condition or conditions of approval.
  - g. Change in property ownership in a manner that causes the majority of the property to be owned by a person or entity not identified in the Use Permit or its application.
  - h. Alteration and/or loss of approved on-site parking.

- i. Upon determination by the City's Planning Director, a change in facility management, a change in facility ownership, or a change in the population served by this facility.
- j. Any other material change in the operational characteristics that is not in substantial conformance with the Operation and Management Plan (Exhibit "B"), upon determination by the City's Planning Director.

**24. Additions or Modifications to Conditions of Approval, or Revocation of Use Permit.** The Hearing Officer or City Council may add or modify conditions of approval to this use permit, or revoke this use permit upon a finding of failure to comply with the conditions set forth. The City Council may also revoke, modify, or amend this use permit if it determines the conditions under which this facility is being operated or maintained are detrimental to the public health, safety, peace, morals, comfort, or general welfare of the community, or if the facility is materially injurious to property or improvements in the vicinity, or if the facility is operated or maintained so as to constitute a public nuisance. In any proceeding to revoke this use permit, the cumulative effect of violation of two or more conditions shall be considered.